

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA

HELENA HUNTERS AND
ANGLERS ASSOCIATION, et al.,
Plaintiffs,

ALLIANCE FOR THE WILD
ROCKIES, et al,
Consolidate Plaintiffs,

v.

LEANNE MARTEN, et al.;
Defendants, and

STATE OF MONTANA
Defendant-Intervenor

)
)
) Consolidate Case Nos.:
) 9:19-CV-47-DLC (Lead)
) 9:19-CV-106-DLC (Member)
)
) **DECLARATION OF**
) **BRETT HAND**

I, Brett Hand, hereby declare as follows:

1. I am the East Side Zone Timber Sale Contracting Officer for the Beaverhead-Deerlodge, Custer-Gallatin, and Helena - Lewis and Clark National Forests. I have been in this position since October of 2016. I have been employed with the Forest Service since 1990 and have worked in timber sale administration for the last 13 years.

2. I am the Timber Sale Contracting Officer for the Scotty Salvage, Upper Tenmile Salvage and South Helena Timber Sales, which were authorized under the Tenmile South Helena Project Decision. The Scotty Salvage Timber Sale was advertised for sale on March 4, 2019 and awarded to Frontier Posts LLC on April 15, 2019. The Upper Tenmile Salvage Timber Sale was advertised for sale on March 7, 2019 and awarded to RY Timber, Inc. on April 15, 2019. The South Helena Timber Sale was advertised for sale on August 4, 2019 and awarded to RY Timber, Inc. on September 10, 2019.

3. The purpose of this declaration is to provide an update on Timber Sale Implementation under the Tenmile South Helena Project Decision and to provide an explanation of the practices used in timber sale administration to make adjustments in light of ground conditions to facilitate safe timber sale implementation, including, for example, the construction of temporary roads.

4. Within the Scotty Salvage Timber Sale Area there are 8 harvest units that total 240 acres, which contain an estimated 13,641 Ton of timber designated for cutting. Specified Road reconstruction has been completed (4.48 miles). Timber harvest has been completed on 157 acres (65%) and 10,629.13 Ton of timber products have been removed. There are no active operations on the sale at this time. Operations are planned to resume in July 2020.

5. Within the Upper Tenmile Salvage Sale Area there are 18 harvest units totaling 740 acres, which contain an estimated 49,697 Ton of timber designated

for cutting. Specified Road reconstruction has been completed on 9.24 miles (99%). Timber harvest has been completed on 437 acres (59%) and 33,220.09 Ton of timber products have been removed. No ground disturbing activities have occurred on the sale within the Jericho Inventoried Roadless Area (Units 7, 8 & 15; Roads 1863 North, 1863-B1, 527-4 & 695-1). There are no active operations on the sale at this time. Operations are planned to resume in July 2020.

6. Within the South Helena Timber Sale Area there are 29 harvest units totaling 952 acres, which contain an estimated 68,704 Ton of timber designated for cutting. Specified Road reconstruction has not yet commenced on the sale (2.99 miles). Timber harvest has been completed on 345 acres (36%) and 7,695.97 Ton of timber products have been removed. No ground disturbing activities have occurred on the sale within the Lazyman Inventoried Roadless Area (Units 102, 102a, 173ab, 173bc, 173bf, 97a, 90ba, 219). There are no active operations on the sale at this time. Operations are planned to resume in July 2020.

7. I was out of the office on Friday, February 21, 2020 when HHA alleged that an unauthorized road was under construction in the Lazyman IRA. I reviewed this information on Monday, February 24, 2020 and determined that the construction in question is a temporary road under the contract- consisting of a realignment of an existing route to provide a safe approach to Forest Road 137.

8. Construction of temporary roads is provided for in the South Helena Timber Sale Contract standard provision B5.1- Authorization and special provision C5.102# - Construction of Temporary Roads. Those contract terms are attached hereto as Exhibits A and B. The approximate location of the temporary road constructed to access FS 137 from unit 101A is shown on the contract's Sale Area Map, attached hereto as Exhibit C. This road is approximately 1,583 feet in length. 1,003 feet was constructed by blading or leveling over an existing road prism. 580 feet is new construction, which consists of a realignment made during construction from a portion of the planned existing road route. This change was made when the Forest Service and Purchaser determined it was necessary to provide a safe approach to the Travis Creek Road (Forest Road 137) for log trucks. Use of this road is done for the season, interim erosion control has been installed and it has been blocked to public traffic. Use of the road will resume in July 2020. This temporary road will be obliterated when it is no longer needed for timber removal.

9. The Forest Service used contract special provision C5.102# in this instance in order to require the Purchaser to reuse the existing road prism to the extent practicable and to have the Purchaser obliterate the existing prism post-harvest. The existing prism required minimal work such as vegetation removal and

surface blading to facilitate log haul, whereas new construction required earthwork with a dozer to build a suitable temporary route.

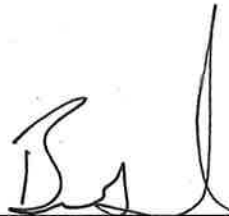
10. Forest Service Handbook (FSH) 2409.18, 43.2 describes what temporary roads are used for and how they are identified during sale administration.

“Temporary roads include those roads needed only for the purchaser’s use for a given timber sale(s), such as roads used to haul timber from landings to permanent National Forest System roads. The Forest Service and the purchaser must agree upon the location, resource protection requirements for road construction, clearing widths, and closure or rehabilitation requirements.

Temporary roads are not constructed to serve long-term future uses and must be closed prior to closure of the timber sale (FSM 2432.34b).”

Pursuant to the provision of 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated the 12th day of March 2020 in Helena, Montana.

A handwritten signature in black ink, appearing to read 'Brett Hand', is written over a horizontal line.

Brett Hand

Exhibit A

South Helena Timber Sale
Contract standard provision
B5.1- Authorization

(v) Restoration of downpayment pursuant to B4.22;

(vi) Periodic payments pursuant to B4.213;

(vii) Extension Deposits pursuant to B4.217; and

(viii) Other mandatory deposits.

(b) Failure to pay amounts due by the date allowed in the bill for collection for receipt of payment shall be considered a breach under B9.3. The 30-day notice period prescribed therein shall begin to run as of the end of business on the date allowed for receipt of payments. If the performance or payment is guaranteed by surety bond, the surety will receive a copy of the written notification of breach. Demand will be made on the surety or other institution providing the guarantee or bond instrument for immediate payment 10 days after issuance of written notification of the breach.

(c) Pursuant to the Debt Collection Improvement Act of 1996, as amended, if payment is not received by Forest Service within 15 days after the date of issue indicated on the bill for collection:

(i) Simple interest shall be assessed at the higher of the Current Value of Funds Rate or the Prompt Payment Rate as established by the Secretary of the Treasury. Interest will begin to accrue as of the date of issue indicated on the initial bill for collection.

(ii) Debtors will be assessed administrative charges, in addition to the delinquent amount due. Administrative charges are those additional costs incurred by the Government in processing, handling, and collecting delinquent debts.

(iii) A penalty charge of six (6) percent per annum will be assessed on any portion of a debt delinquent more than 90 days. This penalty charge is in addition to interest and administrative charges under paragraphs (c)(i) and (c)(ii). The penalty charge shall accrue from the date of issue indicated on the bill for collection and shall be assessed on all outstanding amounts, including interest and administrative costs assessed under paragraphs (c)(i) and (c)(ii).

(iv) Payments will be credited on the date received by the Federal Depository or Collection Officer designated on the bill for collection.

(d) Forest Service remedies for Purchaser's failure to make payment for timber cut and other charges when due, except for accrual of interest, suspension of all or any part of Purchaser's Operations, and administrative offset, shall be stayed for so long as:

(i) A bona fide dispute exists as to Purchaser's obligation to make such payment and

(ii) Purchaser files and prosecutes a timely Claim.

B5.0—TRANSPORTATION FACILITIES

B5.1 Authorization. Purchaser is authorized to construct and maintain roads, bridges, and other transportation facilities, as needed for harvesting Included Timber on National Forest and other lands where Forest Service has such authority. As used in this contract "construct" includes "reconstruct."

Location and construction of Specified Roads shall be in accordance with B5.2. Unless otherwise provided herein, construction may be progressive during this contract. Maintenance shall be governed by B5.3. The location and clearing widths of all Temporary Roads or facilities shall be agreed to in writing before construction is started. "Temporary Roads" are roads other than Specified Roads that are constructed by Purchaser for the purpose of harvesting Included Timber.

Purchaser is authorized to cut and use for construction without charge construction timber designated by agreement.

B5.11 Requirements of Rights-of-Way. Purchaser's road construction and use of rights-of-way identified in attached list or C5.11 shall be confined to rights-of-way and limited by the related easements and stipulations, if any, unless Purchaser makes other arrangements that will not infringe upon or adversely affect the grantee's rights. Easements or right-of-way documents are available in the offices of the Forest Supervisor and District Ranger.

B5.12 Use of Roads by Purchaser. Except as provided herein, Purchaser is authorized to use existing National Forest system roads and Specified Roads listed in A7, when Forest Service determines that such use will not cause damage to the roads or National Forest resources.

If Purchaser's use of an existing temporary or National Forest system road, not listed in A7, cannot be satisfactorily accommodated without reconstruction, Purchaser shall be authorized to use such road upon agreement as to the minimum reconstruction work that Purchaser shall perform before hauling. When appropriate, such road shall be included in A7 as an alternate facility under B5.26.

C5.12 lists existing roads shown on Sale Area Map that for such reasons as limitations in structural capacity, safety, and protection of soil, water, and roads:

(a) Cannot be used for log hauling or

(b) May be used only under the restrictive limitations stated therein.

B5.2 Specified Roads. "Specified Roads" are roads, including related transportation facilities and appurtenances, shown on Sale Area Map and listed in A7. Purchaser shall construct Specified Roads used under this contract. Construction initiated by Purchaser on any such Specified Road shall be completed to an agreed terminus that meets Purchaser's needs and prevents unnecessary impact on National Forest resources. Construction to such terminus shall be in full accordance with Plans and specifications and the Schedule of Items identified in A7 or specifications attached hereto, except for agreed adjustments needed to accommodate such terminus. The "Schedule of Items" is a list and description of construction items, quantities, units of measure, methods of measurement, unit price, and total amount. Forest Service shall revise the Schedule of Items to show the estimated cost for the portion constructed to the revised terminus as a separate segment.

Exhibit B

South Helena Timber Sale
Contract special provision
C5.102#

(d) Forest Service remedies for Purchaser's failure to make payment for timber cut and other charges when due, except for accrual of interest, suspension of all or any part of Purchaser's Operations, and administrative offset, shall be stayed for so long as:

- (i) A bona fide dispute exists as to Purchaser's obligation to make such payment and
- (ii) Purchaser files and prosecutes a timely Claim.

C5.102# - CONSTRUCTION OF TEMPORARY ROADS (2/97). Unless otherwise agreed in writing, temporary roads as shown on the Sale Area Map and as designated on the ground, shall be constructed and closed in accordance with the attached plans and specifications. Location has been designated by **existing road prism. In addition, unit 173AB road termini is identified on the ground with "x"'s in pink tracer paint on the boles of trees. No road construction may take place beyond this termini.**

Purchaser and Forest Service agree that if the Purchaser elects not to build the road, or minor changes in locations or designs are mutually agreed to, there will be no adjustment in costs allowances as extra skid costs or mitigation measures would offset cost differences.

Notwithstanding B2.4, timber within the clearing limits of these temporary roads have been included in the quantity estimate in A2.

C5.113# - USE AGREEMENT BETWEEN FOREST SERVICE AND OWNER (7/85). Purchaser is authorized to **use of PVT-2220 (Hill), PVT – Pauley (Pauley), PVT – 2217 (Anfinson/Klein), PVT – 2242 (Goodspeed/Wallace) and PVT – 2239 (Schroth)** subject to the terms and conditions of a **ROAD USE AGREEMENT** between Forest Service and **Hill, Pauley, Anfinson/Klein, Goodspeed/Wallace, and Schroth.** A copy of said **AGREEMENTS** are available for review in the office of the District Ranger, **HELENA, MONTANA** and the Forest Supervisor **HELENA, MONTANA.**

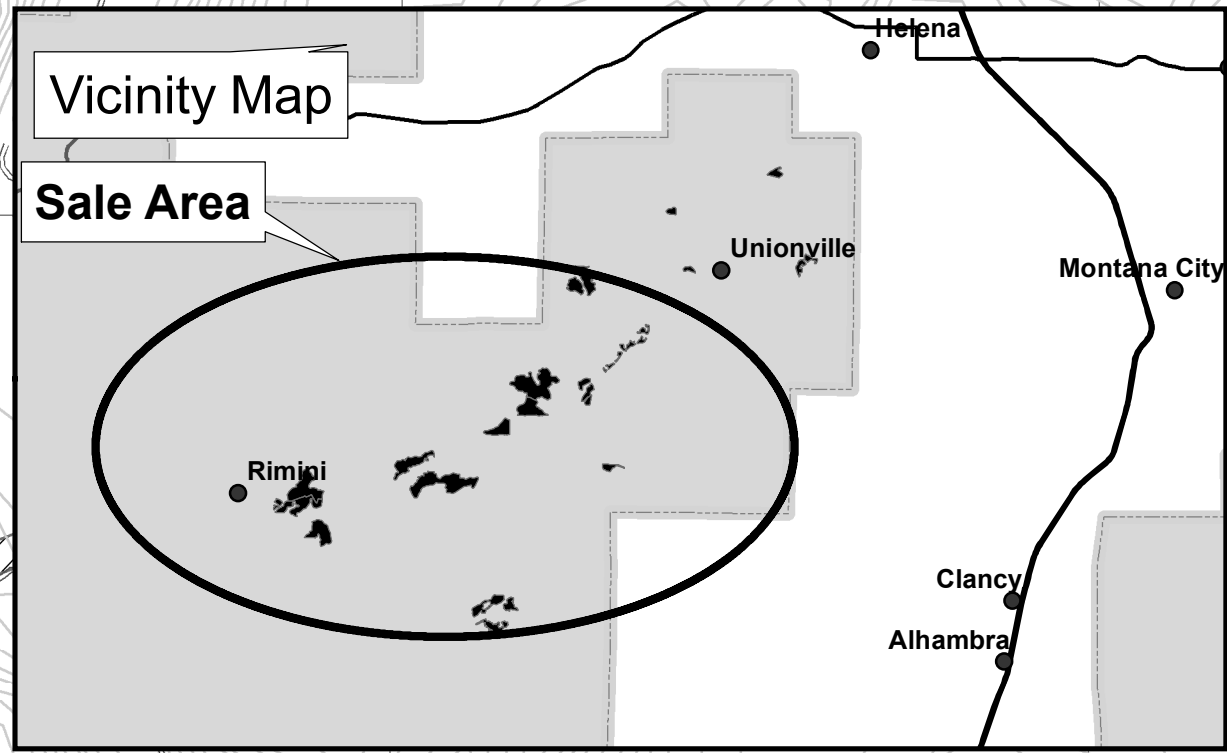
C5.12# – USE OF ROADS BY PURCHASER (6/99). Purchaser's use of existing roads identified on Sale Area Map by the following codes is prohibited or subject to restrictive limitations, unless agreed otherwise:

<u>Code</u>	<u>Use Limitations</u>
X	Hauling prohibited
R	Hauling restricted
U	Unsuitable for hauling prior to completion of agreed reconstruction
P	Use prohibited
A	Public use restriction
W	Regulation waiver

Exhibit C

Map displaying the approximate
location of the temporary road
constructed to access FS 137
from unit 101A

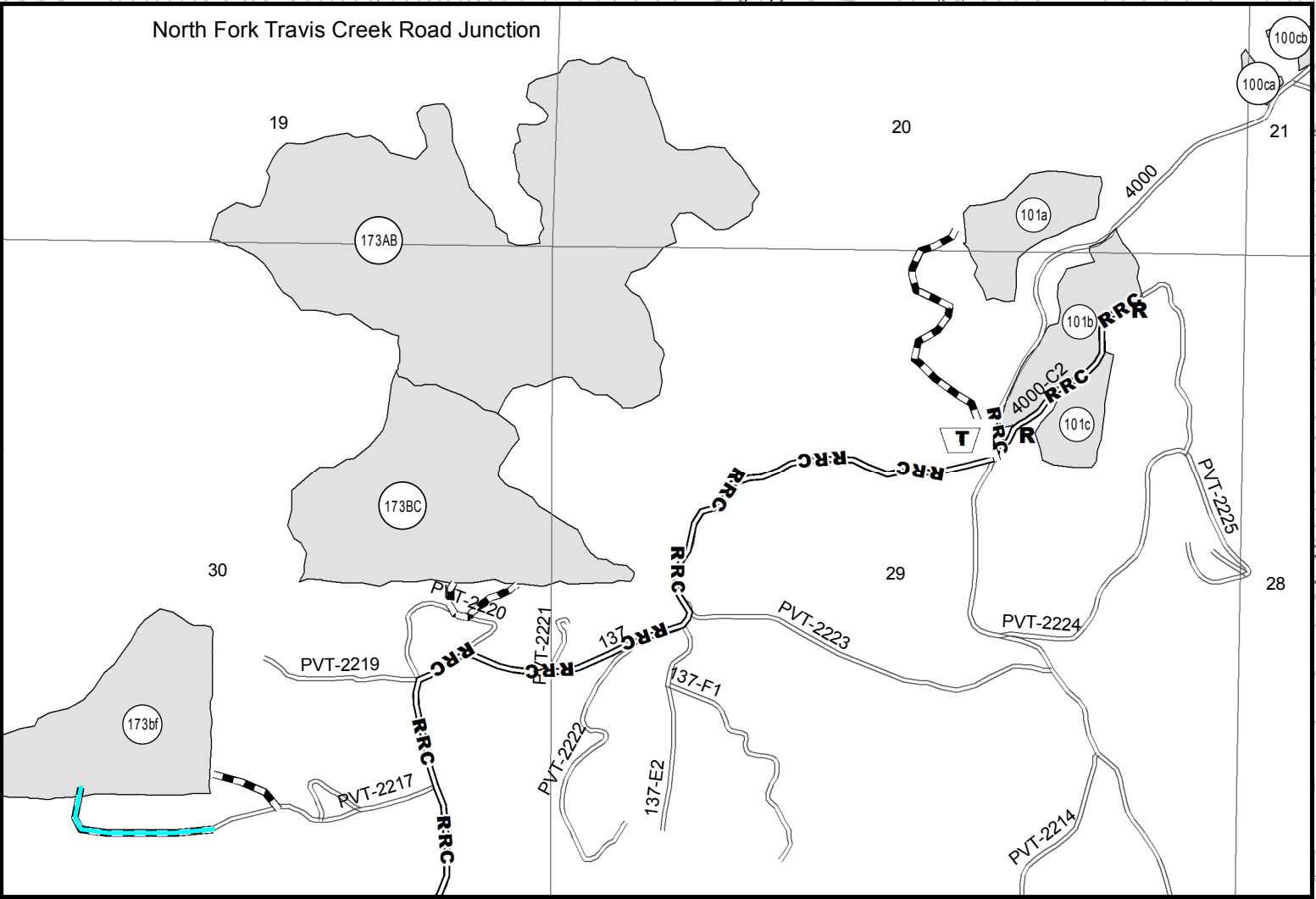
Sale Area & Hazard Reduction
and Site Preparation Map
Sale Name: South Helena
National Forest: Helena - Lewis & Clark
District: Helena
Sheet 2 of 2



TAB

Note: Temporary Activity Barricades shall be installed at each junction where a temporary road meets an FS System road that has public road access. (Not needed behind gated roads that are closed to public). See C5.41#

Cutting Unit Information				Hazard Reduction Requirements, C6.7#			
Subdivision	Unit	Acres	Skidding or yarding method specified, B6.42	Designation Method	Landing Cleanup	Fell Damaged Residuals	Leave Tree Whole Protection Tree Yard
1	112	15	Tractor, C6.4#	Leave Tree Mark, B2.35, C2.35#	X	X	X
2	89c	9	Tractor, C6.4#	Leave Tree Mark, B2.35, C2.35#	X	X	X
3	56a	13	Tractor, C6.4#	Leave Tree Mark, B2.35, C2.35#	X	X	X
4	59	9	Tractor, C6.4#	Leave Tree Mark, B2.35, C2.35#	X	X	X
4	103a	7	Tractor, C6.4#	Leave Tree Mark, B2.35, C2.35#	X	X	X
5	102	45	Forwarder, C6.42#	Leave Tree Mark, B2.35, C2.35#	X	X	X
5	102a	30	Forwarder, C6.42#	Leave Tree Mark, B2.35, C2.35#	X	X	X
6	101a	13	Tractor, C6.4#	Leave Tree Mark, B2.35, C2.35#	X	X	X
6	101b	14	Tractor, C6.4#	Leave Tree Mark, B2.35, C2.35#	X	X	X
6	101c	7	Tractor, C6.4#	Leave Tree Mark, B2.35, C2.35#	X	X	X
6	173ab	135	Forwarder, C6.42#	Leave Tree Mark, B2.35, C2.35#	X	X	X
6	173bc	55	Tractor, C6.4#	Leave Tree Mark, B2.35, C2.35#	X	X	X
6	173bf	40	Tractor, C6.4#	Leave Tree Mark, B2.35, C2.35#	X	X	X
6	100ca	1	Tractor, C6.4#	Leave Tree Mark, B2.35, C2.35#	X	X	X
6	100cb	3	Tractor, C6.4#	Leave Tree Mark, B2.35, C2.35#	X	X	X
6	100cc	4	Tractor, C6.4#	Leave Tree Mark, B2.35, C2.35#	X	X	X
6	100cd	10	Tractor, C6.4#	Leave Tree Mark, B2.35, C2.35#	X	X	X
6	100ce	5	Tractor, C6.4#	Leave Tree Mark, B2.35, C2.35#	X	X	X
6	100cf	8	Tractor, C6.4#	Leave Tree Mark, B2.35, C2.35#	X	X	X
6	97	132	Tractor, C6.4#	Leave Tree Mark, B2.35, C2.35#	X	X	X
6	97a	61	Tractor, C6.4#	Leave Tree Mark, B2.35, C2.35#	X	X	X
7	75	13	Tractor, C6.4#	Leave Tree Mark, B2.35, C2.35#	X	X	X
8	180b	62	Tractor, C6.4#	Leave Tree Mark, B2.35, C2.35#	X	X	X
8	219	91	Tractor, C6.4#	Leave Tree Mark, B2.35, C2.35#	X	X	X
8	180a1	64	Tractor, C6.4#	Leave Tree Mark, B2.35, C2.35#	X	X	X
8	180a2	8	Tractor, C6.4#	Leave Tree Mark, B2.35, C2.35#	X	X	X
9	118	34	Tractor, C6.4#	Species Designation, B2.35, C2.38#	X	X	X
9	98c	46	Tractor, C6.4#	Species Designation, B2.35, C2.38#	X	X	X
9	98t	18	Tractor, C6.4#	Species Designation, B2.35, C2.38#	X	X	X



- Legend
- Cutting Unit Boundary, B2.3
 - Cutting Unit, B1.1
 - Sale Area and Subdivision Boundary, B1.1
 - Subdivision, B2.3, B2.36
 - Timber Subject to Agreement, C2.11#
 - Temporary Road, C5.102#
 - Other Ownership
 - LOP Limited Operating Period, C6.316#
 - LF Log Forwarding Units, C6.42#
 - SD Species Designation, C2.38#
 - Existing Transportation System, B5.12, B6.22, C5.12#
 - RRC Road Reconstruction, A7, B5.2
 - KO Keep Road Open, B6.22
 - X Hauling Prohibited, C5.12#
 - P Use Prohibited, C5.12#
 - TAB Temporary Activity Barricade, C5.41#
 - TBC Gate To Be Closed, C5.41#
 - R Hauling Restricted, C5.12#
 - T Traffic control Device, B6.33
 - Protect Streamcourse, B6.5
 - Protect Improvement Fence, B6.22
 - Protect Improvement Trail, B6.22
 - Protect Heritage Ditch, C6.24#
 - Protect Improvement Existing Gate, B6.22, C5.41#
 - Protect Improvement Survey Monument, C6.23

